



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5018

Introduced 2/18/2020, by Rep. Anne Stava-Murray

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-2

from Ch. 38, par. 14-2

Amends the Criminal Code of 2012. Provides that a person, other than a corporation or licensed real estate broker displaying residential real estate to potential buyers, is not criminally liable for eavesdropping if he or she has the consent of one party to the private conversation or private electronic communication that he or she overheard, transmitted, transcribed, intercepted, used, disclosed, or recorded.

LRB101 18552 RLC 68006 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Section 14-2 as follows:

6 (720 ILCS 5/14-2) (from Ch. 38, par. 14-2)

7 Sec. 14-2. Elements of the offense; affirmative defense.

8 (a) Paragraphs (1) through (3) and (5) of this subsection
9 (a) apply only to natural persons, other than real estate
10 brokers licensed under the Real Estate License Act of 2000
11 displaying residential real estate to potential buyers of that
12 real estate. A person commits eavesdropping when he or she
13 knowingly and intentionally:

14 (1) uses ~~Uses~~ an eavesdropping device, in a
15 surreptitious manner, for the purpose of overhearing,
16 transmitting, or recording all or any part of any private
17 conversation to which he or she is not a party unless he or
18 she does so with the consent of one of the parties ~~all of~~
19 ~~the parties~~ to the private conversation;

20 (2) (blank) ~~Uses an eavesdropping device, in a~~
21 ~~surreptitious manner, for the purpose of transmitting or~~
22 ~~recording all or any part of any private conversation to~~
23 ~~which he or she is a party unless he or she does so with the~~

1 ~~consent of all other parties to the private conversation;~~

2 (3) intercepts ~~Intercepts~~, records, or transcribes, in
3 a surreptitious manner, any private electronic
4 communication to which he or she is not a party unless he
5 or she does so with the consent of one party ~~all parties~~ to
6 the private electronic communication;

7 (4) (blank) ~~Manufactures, assembles, distributes, or~~
8 ~~possesses any electronic, mechanical, eavesdropping, or~~
9 ~~other device knowing that or having reason to know that the~~
10 ~~design of the device renders it primarily useful for the~~
11 ~~purpose of the surreptitious overhearing, transmitting, or~~
12 ~~recording of private conversations or the interception, or~~
13 ~~transcription of private electronic communications and the~~
14 ~~intended or actual use of the device is contrary to the~~
15 ~~provisions of this Article; or~~

16 (5) uses ~~Uses~~ or discloses any information which he or
17 she knows or reasonably should know was obtained from a
18 private conversation or private electronic communication
19 in violation of this Article, unless he or she does so with
20 the consent of one ~~all~~ of the parties.

21 (a-1) This subsection (a-1) applies only to corporations
22 and to real estate brokers licensed under the Real Estate
23 License Act of 2000 displaying residential real estate to
24 potential buyers of that real estate. A person commits
25 eavesdropping when he or she knowingly and intentionally:

26 (1) uses an eavesdropping device, in a surreptitious

1 manner, for the purpose of overhearing, transmitting, or
2 recording all or any part of any private conversation to
3 which he or she is not a party unless he or she does so with
4 the consent of all of the parties to the private
5 conversation;

6 (2) uses an eavesdropping device, in a surreptitious
7 manner, for the purpose of transmitting or recording all or
8 any part of any private conversation to which he or she is
9 a party unless he or she does so with the consent of all
10 other parties to the private conversation;

11 (3) intercepts, records, or transcribes, in a
12 surreptitious manner, any private electronic communication
13 to which he or she is not a party unless he or she does so
14 with the consent of all parties to the private electronic
15 communication; or

16 (4) uses or discloses any information which he or she
17 knows or reasonably should know was obtained from a private
18 conversation or private electronic communication in
19 violation of this Article, unless he or she does so with
20 the consent of all of parties.

21 (a-2) A person commits eavesdropping when he or she
22 knowingly and intentionally manufactures, assembles,
23 distributes, or possesses any electronic, mechanical,
24 eavesdropping, or other device knowing that or having reason to
25 know that the design of the device renders it primarily useful
26 for the purpose of the surreptitious overhearing,

1 transmitting, or recording of private conversations or the
2 interception, or transcription of private electronic
3 communications and the intended or actual use of the device is
4 contrary to the provisions of this Article.

5 (a-5) It does not constitute a violation of this Article to
6 surreptitiously use an eavesdropping device to overhear,
7 transmit, or record a private conversation, or to
8 surreptitiously intercept, record, or transcribe a private
9 electronic communication, if the overhearing, transmitting,
10 recording, interception, or transcription is done in
11 accordance with Article 108A or Article 108B of the Code of
12 Criminal Procedure of 1963.

13 (b) It is an affirmative defense to a charge brought under
14 this Article relating to the interception of a privileged
15 communication that the person charged:

16 1. was a law enforcement officer acting pursuant to an
17 order of interception, entered pursuant to Section 108A-1
18 or 108B-5 of the Code of Criminal Procedure of 1963; and

19 2. at the time the communication was intercepted, the
20 officer was unaware that the communication was privileged;
21 and

22 3. stopped the interception within a reasonable time
23 after discovering that the communication was privileged;
24 and

25 4. did not disclose the contents of the communication.

26 (c) It is not unlawful for a manufacturer or a supplier of

1 eavesdropping devices, or a provider of wire or electronic
2 communication services, their agents, employees, contractors,
3 or vendors to manufacture, assemble, sell, or possess an
4 eavesdropping device within the normal course of their business
5 for purposes not contrary to this Article or for law
6 enforcement officers and employees of the Illinois Department
7 of Corrections to manufacture, assemble, purchase, or possess
8 an eavesdropping device in preparation for or within the course
9 of their official duties.

10 (d) The interception, recording, or transcription of an
11 electronic communication by an employee of a penal institution
12 is not prohibited under this Act, provided that the
13 interception, recording, or transcription is:

14 (1) otherwise legally permissible under Illinois law;

15 (2) conducted with the approval of the penal
16 institution for the purpose of investigating or enforcing a
17 State criminal law or a penal institution rule or
18 regulation with respect to inmates in the institution; and

19 (3) within the scope of the employee's official duties.

20 For the purposes of this subsection (d), "penal
21 institution" has the meaning ascribed to it in clause (c) (1) of
22 Section 31A-1.1.

23 (e) Nothing in this Article shall prohibit any individual,
24 not a law enforcement officer, from recording a law enforcement
25 officer in the performance of his or her duties in a public
26 place or in circumstances in which the officer has no

1 reasonable expectation of privacy. However, an officer may take
2 reasonable action to maintain safety and control, secure crime
3 scenes and accident sites, protect the integrity and
4 confidentiality of investigations, and protect the public
5 safety and order.

6 (Source: P.A. 98-1142, eff. 12-30-14; 99-352, eff. 1-1-16.)